

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**DAVID W. SMITH, JR.,**  
**Plaintiff**

**v.**

**UNITED STATES OF AMERICA,**  
**Defendant**

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**No. 1:20-cv-00670**

**(Judge Kane)**

**ORDER**

**AND NOW**, on this 17th day of December 2020, in accordance with the Memorandum issued concurrently with this Order, **IT IS ORDERED THAT:**

1. Defendant's motion to dismiss (Doc. No. 12) is **GRANTED in part** and **DENIED in part**, as follows:
  - a. The motion (Doc. No. 12) is **GRANTED** to the extent Plaintiff alleges that BOP officials were negligent by failing to remove weightlifting equipment from federal prisons following passage of the Zimmer Amendment;
  - b. The motion (Doc. No. 12) is **DENIED** to the extent Plaintiff alleges that BOP officials were negligent by circumventing the Zimmer Amendment by allowing repairs to the weightlifting machines and making those repairs in a negligent fashion;
2. Defendant is directed to file an answer to the complaint (Doc. No. 1) within fourteen (14) days of the date of this Order; and
3. The above-captioned case is **REFERRED** to the Court's Prisoner Litigation Settlement Program;
4. Joseph Barrett, Esq., the ADR Coordinator for the Middle District of Pennsylvania, is **APPOINTED** to serve as mediator;
5. All settlement discussions are confidential and may not be utilized by any party if settlement is not reached;
6. In order to reduce cost, time, expense, inconvenience, and to suitably address institutional security concerns, counsel for Defendant and the mediator will coordinate with officials for the Bureau of Prisons to schedule video-conference mediation sessions with Plaintiff at mutually convenient times, and in a manner that comports with the needs and concerns of prison officials;

7. The parties shall complete mediation within forty-five (45) days of the date of this Order;
8. The parties and the mediator shall promptly notify the Court in writing if this case is resolved through mediation; and
9. Discovery in the above-captioned case is **STAYED** pending the outcome of mediation.

s/ Yvette Kane  
Yvette Kane, District Judge  
United States District Court  
Middle District of Pennsylvania